

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of Kormann's Supermarket,  
WIC Vendor No. 7255

**AMENDED FINDINGS OF  
FACT, CONCLUSIONS OF  
LAW AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha at 9:30 a.m. on March 31, 1999, at the Department of Health Service Center, St. Croix Room, 1645 Energy Park Drive, St. Paul, Minnesota. The record closed that same day upon conclusion of closing remarks.

Julie E. Allyn, Assistant Attorney General, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota department of Health (Department). Assim Abuhejleh, owner of Kormann's Supermarket, 719 Burr Street, St. Paul, Minnesota 55101 appeared on behalf of Kormann's Supermarket (Kormann's).

**NOTICE**

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of the Department of Health shall not be made until this Report has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Jan Malcolm, Commissioner, Department of Health, 450 Metro Square Building, 121 7<sup>th</sup> Place E., St. Paul, Minnesota 55101.

**STATEMENT OF ISSUE**

The issue to be determined in this proceeding is whether Kormann's violated Minn. Rule 4617.0086, subp. 3(A) charging the women, infants & children (WIC) Program for items not received by a WIC customer, or subp. 3(L) charging the WIC program more money for an item than the vendor's usual and customary charge for that item; and Minn. Rule 4617.0086, subp. 4(B) providing any food other than a WIC-allowed food in exchange for a voucher, and if so, whether it should be disqualified as a vendor in the special supplemental food program for eighteen months.

Base upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Kormann's Supermarket is a grocery store located at 719 Burr Street, St. Paul, Minnesota 55101. Assim Abuhejleh owns the store.
2. Khled Abed is an employee of Kormann's Supermarket. He has been employed there for approximately eight to nine months. Mr. Abed's duties include stocking the shelves, cashiering, and other light duties.
3. Heider Almeala is an employee of Kormann's Supermarket. He has been employed there for approximately three years. Mr. Almeala's duties include stocking the shelves, cashiering, other light duties, and assisting the owner with the book keeping. Mr. Almeala has been a friend of the family of the owner's for many years.
4. Mr. Abuhejleh became an owner and then a partner of Kormann's Supermarket approximately 3 years ago. When Mr. Abuhejleh took ownership, the store was an authorized WIC vendor assigned to WIC vendor number 7255.
5. On April 22, 1998, the WIC Program Vendor Training was completed at Kormann's. Mr. Abuhejleh signed the Minnesota WIC Program Vendor Training Verification<sup>[1]</sup>, which required that he convey all information presented during the WIC vendor training to all store cashiers. The vendor agreement was scheduled to expire on April 30, 1999.
6. Freddie Marsh-Lott is a Compliance Manager for WIC at the Minnesota Department of Health. Mr. Marsh-Lott's duties include ensuring that authorized vendors comply with rules and procedures and non-authorized vendors do not participate in the WIC program. Mr. Marsh-Lott started the monitoring and investigation process for WIC reauthorization for Kormann's Supermarket in the fall of 1998.
7. A.H.<sup>[2]</sup> is a part time undercover investigator for WIC at the Minnesota Department of Health. On August 10, 1998, A.H., posing as a customer, presented a WIC voucher<sup>[3]</sup> at Kormann's. In exchange for the WIC voucher, A.H. received some food items. The food items were Froot Loops cereal, Frosted Cheerios cereal, one gallon milk, one dozen eggs, 12 ounces frozen Minute Maid grapefruit juice, and 12 ounces frozen Five Alive citrus beverage.<sup>[4]</sup> The Froot Loops cereal, Frosted Cheerios cereal, and the Five Alive citrus beverage are not WIC-allowed foods. In addition, the cashier failed to verify that the signature on the voucher matched the signature on the WIC identification folder.
8. Mr. Abed was operating the cash register on August 10, 1998.
9. Once the purchased items were brought to the car, A.H. and Mr. Marsh-Lott listed the items on the Report of WIC Investigation,<sup>[5]</sup> and the grocery bag received an identifying tag with Kormann's name. At the food donation location, the purchased items were removed from the individual bag, photographed,<sup>[6]</sup> and signed for by the donation receiver.<sup>[7]</sup>

10. On August 19, 1998, A.H., posing as a customer, presented a WIC voucher<sup>[8]</sup> at Kormann's. In exchange for the WIC voucher, A.H. received some food items. The food items included Crunch Berries cereal, Frosted Cheerios cereal, one gallon milk, one dozen eggs, 12 ounces frozen Minute Maid grapefruit juice, and 12 ounces frozen Sunbright orange juice.<sup>[9]</sup> Crunch Berries cereal and Frosted Cheerios cereal are not WIC-allowed foods. In addition, the cashier at Kormann's Supermarket failed to enter the total cost on the voucher prior to the investigator signing the voucher.
11. It is not clear from the evidence presented who was operating the cash register on August 19, 1998.
12. Once the purchased items were brought to the car, A.H. and Mr. Marsh-Lott listed the items on the Report of WIC Investigation,<sup>[10]</sup> and the grocery bag received an identifying tag with Kormann's name. At the food donation location, the purchased items were removed from the individual bag, photographed<sup>[11]</sup>, and signed for by the donation receiver.<sup>[12]</sup>
13. On August 26, 1998, Mr. Marsh-Lott completed a Competitive Price Check Worksheet,<sup>[13]</sup> Vendor Monitoring Summary Report,<sup>[14]</sup> and a WIC Training Verification<sup>[15]</sup> at Kormann's Supermarket. The Vendor Monitoring Summary Report<sup>[16]</sup> noted stock levels below minimum requirements (infant formula and eggs); expired WIC approved food (Wheat Chex dated 11/29/96 and 8/16/97); and prices not posted for WIC approved food (milk, infant juice, and infant formula).
14. After completing the Vendor Monitoring Summary report on August 26, 1998, Mr. Marsh-Lott requested to speak with the owner of Kormann's. When Mr. Marsh-Lott was informed that the owner was not available, he requested to speak to the store manager. Mr. Almeala identified himself to Mr. Marsh-Lott as the store manager. Mr. Marsh-Lott reviewed the Vendor Monitoring Summary Report<sup>[17]</sup> and the WIC Training Verification<sup>[18]</sup> with Mr. Almeala. Mr. Almeala verified this review by signing the WIC Training Verification.<sup>[19]</sup> Mr. Almeala wrote his title on the form as "cashier".
15. In a letter dated September 3, 1998,<sup>[20]</sup> addressed to Mr. Abuhejleh, the Department wrote that the cashiers at Kormann's Supermarket, "are not entering a dollar amount on vouchers prior to the participant's signature, are allowing participants to purchase unapproved food with vouchers, and are not comparing the WIC customer's signature on each voucher with the signature on the WIC identification folder." The letter also stated that, "a monitoring visit found that your store did not meet the following WIC Program requirements: 1. Minimum stock level requirements for infant formula and eggs; 2. Expired WIC approved food (Wheat Chex which expired 11/29/96 and 8/16/97; and, 3. Prices not posted or marked for WIC approved food (milk, infant juice, and infant formula)."<sup>[21]</sup> The letter was sent using the United States postal service's Return Receipt service.<sup>[22]</sup>

16. Mr. Almeala signed for the letter and did not pass it on to the Respondent, Mr. Abuhejleh.
17. J.T. <sup>[23]</sup> is a part time undercover investigator for WIC at the Minnesota Department of Health. On October 15, 1998, J.T., posing as a customer, presented a WIC voucher <sup>[24]</sup> at Kormann's. In exchange for the WIC voucher, J.T. received some food items. These food items were Honey Frosted Wheaties cereal, Kellogg's Frosted Flakes, one-gallon milk, one dozen eggs, two 46-ounce containers of Juicy Juice. <sup>[25]</sup> The honey Frosted Wheaties cereal and Kellogg's Frosted Flakes cereal are not WIC allowed foods. J.T. did not purchase the cheese or peanut butter, as allowed by that WIC voucher. Kormann's overcharged WIC by \$4.19 <sup>[26]</sup>, either by charging for the cheese and peanut butter which were not obtained, or by charging more than Kormann's listed prices.
18. Mr. Almeala was operating the cash register on October 15, 1998.
19. Once the purchased items were brought to the car, A.H. and Mr. Marsh-Lott listed the items on the Report of WIC Investigation, <sup>[27]</sup> and the grocery bag received an identifying tag with Kormann's name. At the food donation location, the purchased items were removed from the individual bag, photographed, <sup>[28]</sup> and signed for by the donation receiver. <sup>[29]</sup>
20. In a letter dated January 4, 1999, <sup>[30]</sup> Mr. Abuhejleh was informed that the Minnesota WIC program terminated Kormann's Supermarket authorization as a WIC vendor for 18 months. The letter cited Class A, Class B, and Class C violations of the vendor agreement and the Minnesota rules, which govern the WIC program. The letter noted the 3 violations occurred on August 10, August 19, and October 15, 1998.

## **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of the Minnesota Department of Health have jurisdiction in this matter pursuant to Minn. Stat. § 14.40, 7 C.F.R. § 246.18, and Minn. R. 461.0100, subp. 1.
2. The notice of Hearing was proper in all respects and the Department has complied with all other substantive and procedural requirements of law or rule.
3. Minn. R. 4617.0086, subp. 3 provides in relevant part:

Itemization of Class A violations. Each of the following actions shall be a Class A violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

- A. charging the WIC program for items not received by a WIC customer;

\* \* \*

- B. Charging the WIC program more money for an item than the vendor's usual and customary charge for that item;

- 4. Minn. R. 4617.0086, subp. 4 provides in relevant part:

Itemization of Class B violations. Each of the following actions shall be a Class A violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

\* \* \*

- B. except as specified in subpart 3, item C, providing any food other than WIC-allowed food in exchange for a voucher;

\* \* \*

- H. if the vendor is a food vendor, failing to maintain the required minimum stock under part 4617.0067, subpart 3, but only if this failure is with respect to two or more types of food;

- 5. Minn. R. 4617.0086, subp. 4 provides in relevant part:

Itemization of Class C violations. Each of the following actions shall be a Class A violation by a vendor, when committed by any controlling person, employee, or agent of the vendor:

\* \* \*

- M. Failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the SIC Authorization folder;

- 6. The Department has the burden of providing by a preponderance of the evidence that Kormann's Supermarket violated its guarantee and WIC Program rules and that such violations support disqualification of Kormann's supermarket from participating in the WIC program for 18 months.
- 7. Kormann's Supermarket violated its vendor agreement and Minnesota Rule 4617.0086, subp. 3(A) or Minnesota Rule 4617.0086, subp. 3. (L) by either charging the WIC program for foods not received by an undercover investigator or by charging the WIC program more than the store's usual and customary amount for the foods received by the undercover investigator. This is a Class A violation.

8. Kormann's Supermarket violated its vendor agreement and the Minnesota Rule 4617.0086, subp. 4(B) by providing food other than WIC-allowed food in exchange for a voucher. This is a Class B violation.
9. Kormann's Supermarket violated its vendor agreement and Minnesota Rule 4617.0086, subp. 4(H) by failing to maintain the required minimum stock under part 4617.0067, subp. 3, with respect two types of WIC approved food. This is a Class B violation.
10. Kormann's Supermarket violated its vendor agreement and Minnesota Rule 4617.0086, subp. 5(C) by entering the dollar amount on the voucher after the WIC customer has signed the voucher. This is a Class C violation.
11. Kormann's Supermarket violated its vendor agreement and Minnesota Rule 4617.0086, subp. 5(M) by failing to verify that the signature of the individual who signs the voucher matches an authorized signature on the WIC Authorization folder. This is a Class C violation.
12. Minnesota Rule 4617.0086, subp. 2(A), provides for disqualification for one year for a vendor's first Class A violation.
13. The Class A violation committed by Kormann's Supermarket constitutes an abuse that supports the one-year disqualification.
14. Minnesota Rule 4617.0086, subp. 2(B)(2) provides, "For a second [Class B] violation within any two-year period of a particular item in [Minn. R. 4617.0086] subpart 4, the commissioner shall disqualify the vendor for six months."
15. The Class B violations committed by Kormann's Supermarket constitutes an abuse that supports the six months disqualification.
16. The Class C violations are not used to calculate the length of the disqualification of Kormann's Supermarket.
17. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner of Health AFFIRM the disqualification of Kormann's Supermarket from the WIC program for 18 months.

Dated this \_\_\_\_\_ day of May, 1999.

---

PHYLLIS A. REHA  
Administrative Law Judge

Reported: Tape Recorded

### NOTICE

Under Minnesota law,<sup>[31]</sup> the Commissioner of Health is required to serve her final decision upon each party and the Administrative Law Judge by first-class mail.

### MEMORANDUM

Kormann's Supermarket argues that the fact that the violations were concealed by the employees shields Kormann's Supermarket from sanctions. On August 26, 1998, the Respondent, Mr. Abuhejleh, was out of the state on his honeymoon. Although Mr. Almeala was a long-term employee of Kormann's Supermarket with extra responsibility, he was not the manager. Mr. Almeala presented himself to Mr. Marsh-Lott as the manager; however, when he signed the WIC Training Verification,<sup>[32]</sup> he wrote his title as cashier. Mr. Almeala did not tell Mr. Abuhejleh, the Respondent, about this occurrence.

When the letter dated September 3, 1998<sup>[33]</sup> arrived via Return Receipt postage at Kormann's Supermarket, Mr. Almeala signed for the letter. Mr. Almeala failed to pass the letter onto Mr. Abuhejleh, the Respondent. Mr. Almeala and the other cashier, Mr. Abed, had discussions about why Mr. Almeala did not show the letter to Mr. Abuhejleh. Mr. Abed testified that he tried to get Mr. Almeala to tell the Respondent about the letter. Mr. Abed perceived that Mr. Almeala felt guilty. Mr. Almeala threw out the letter. Mr. Almeala left the store 2 weeks later.

Mr. Abed testified that he did not tell Mr. Abuhejleh about the letter because he felt it was not his place. Mr. Almeala is older, has more responsibility at the store, and has worked at the store longer than Mr. Abed.

Mr. Abuhejleh, the Respondent requested that Mr. Almeala be present to testify at the hearing, and even offered him a ride. However, Mr. Almeala failed to show.

The vendor agreement specifically states that prohibited acts constitute violations if committed by “any controlling person, employee, or agent of the vendor....”<sup>[34]</sup> Additionally, the paragraph above the signature line on the vendor agreement states, “The individual signing this agreement on behalf of the Vendor certifies that he...understands that the Vendor is fully accountable for the actions of its controlling persons, employees, and agents relative to this agreement.”<sup>[35]</sup> Minnesota WIC rules do not allow for an exception based on employee concealment. More importantly, Minnesota WIC Rules make clear that an act of the employee is an act of the vendor.

During his testimony, Mr. Abuhejleh, the Respondent, testified that Kormann’s Supermarket has never carried Crunch Berries cereal. However, because of the elaborate tracking procedure of the purchased items, Mr. Marsh-Lott’s testimony was found to be credible.

Due to the Class A violation and the repeated Class B violations of Kormann’s Supermarket, disqualification of the vendor for a period of 18 months is reasonable and is supported by the record in the matter and the applicable portions of the WIC Program rules. Therefore, the Administrative Law Judge recommends that the disqualification issued by the Department in this matter be AFFIRMED

P.A.R.

---

<sup>[1]</sup> Ex. 2.

<sup>[2]</sup> Initials of undercover investigator is used to keep identity of investigator confidential pursuant to Protective Order issued by the ALJ in this matter.

<sup>[3]</sup> Ex. 8.

<sup>[4]</sup> Ex. 10.

<sup>[5]</sup> Ex. 7.

<sup>[6]</sup> Ex. 10.

<sup>[7]</sup> Ex. 9.

<sup>[8]</sup> Ex. 12.

<sup>[9]</sup> Ex. 13.

<sup>[10]</sup> Ex. 11.

<sup>[11]</sup> Ex. 13.

<sup>[12]</sup> Ex. 14.

<sup>[13]</sup> Ex. 21.

<sup>[14]</sup> Ex. 22.

<sup>[15]</sup> Ex. 23.

<sup>[16]</sup> Ex. 22.

<sup>[17]</sup> Id.

<sup>[18]</sup> Ex. 23.

<sup>[19]</sup> Id.

<sup>[20]</sup> Ex. 15.

<sup>[21]</sup> Ex. 21.

<sup>[22]</sup> Ex. 15.

<sup>[23]</sup> Initials of undercover investigator is used to keep identity of investigator confidential pursuant to Protective Order issued by the ALJ in this matter.



- [\[24\]](#) Ex. 17.
- [\[25\]](#) Ex. 18.
- [\[26\]](#) Ex. 20.
- [\[27\]](#) Ex. 16.
- [\[28\]](#) Ex. 18.
- [\[29\]](#) Ex. 19.
- [\[30\]](#) Ex. 26.
- [\[31\]](#) Minnesota Statutes, section 14.62, subdivision 1.
- [\[32\]](#) Ex. 23.
- [\[33\]](#) Ex. 15.
- [\[34\]](#) Ex. 4 at ¶ XI (A); Minn. Rule 4617.0086, subp. 3 (1997).
- [\[35\]](#) Ex. 4 at ¶ XIV.